

COMMISSIONERS APPROVAL

ROKOSCH

GRANDSTAFF

THOMPSON

CHILCOTT

DRISCOLL

PLETTENBERG (Clerk & Recorder)

Date.....October 15, 2007

Members Present.....Commissioner Jim Rokosch,
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

The Board met to interview Don Coon for the Animal Protection & Control Board.

The Board met for a public meeting on a Request for Commission Action on Burr Creek Ranch 14-Lot, Major Subdivision and one variance request. Present was Planners Tristan Riddell and Renee Lemon, Developer Paul Shirley, Bill Burnett and Gilbert Larsen of PCI, and Attorney Bill Van Canagan who represented the Developer.

Commissioner Rokosch was not present for the first portion of this meeting.
Commissioner Grandstaff called the meeting to order. No conflicts of interest were noted from any Board member.

Commissioner Rokosch was now present.

Tristan presented a staff report and as follows:

**BURR CREEK RANCH
14-LOT MAJOR SUBDIVISION AND ONE VARIANCE REQUEST
*Subject to Ravalli County Subdivision Regulations, as amended August 4,
2005***

STAFF REPORT FOR PLANNING BOARD

CASE PLANNER: Tristan Riddell

**REVIEWED/
APPROVED BY:**

Renee Van Hoven

**PUBLIC HEARINGS/
MEETINGS:**

RCPB Plat Evaluation:

June 27, 2007

RCPB Public Hearing:

July 18, 2007

RCPB Public Hearing (Continuation):

September 5, 2007

Deadline for PB recommendation to BCC:

October 3, 2007

BCC Public Meeting:

TBA

Deadline for BCC action (Extended on 8/27/07)

November 20, 2007

APPLICANT/OWNER:

Burr Creek Ranch, LLC

P.O. Box 421

Darby, MT 59829

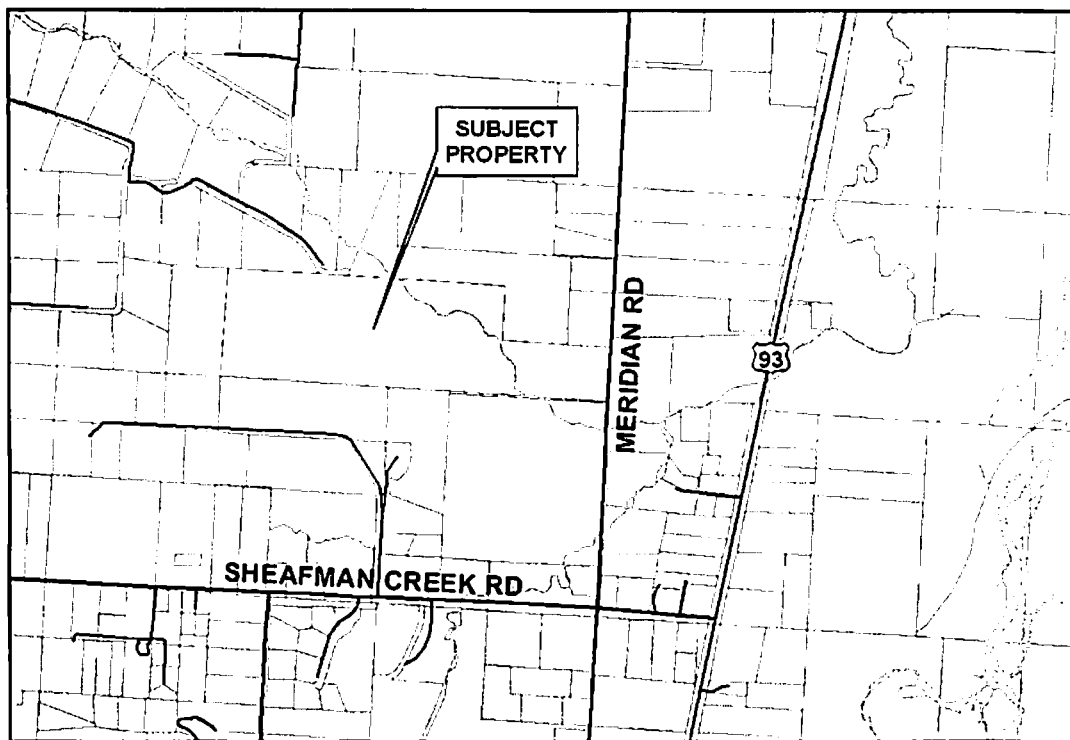
REPRESENTATIVE:

Bill Burnett, PCI, (406) 363-1201

LOCATION OF REQUEST:

The property is located south of Victor off
Meridian Road.

(See Map 1)



Map 1: Location Map
 (Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
 OF PROPERTY:**

Tract A of Certificate of Survey 572247 located in the N1/2 of Section 24, T7N, R21W, P.M.M., Ravalli County, Montana.

**APPLICATION
 INFORMATION:**

The subdivision application was determined complete on June 13, 2007. Agencies were notified of the subdivision and comments are included in the application and as Exhibits A-1 through A-5.

LEGAL NOTIFICATION:

A legal advertisement was published in the Ravalli Republic on Tuesday, July 3, 2007. Notice of the project was posted on the property and adjacent property owners were notified by certified mail postmarked June 27, 2007. Public comments are included as Exhibits B-1 through B-4.

**DEVELOPMENT
 PATTERN:**

Subject property	Vacant Residential
North	Large Lot Residential
South	Large Lot Residential
East	Large Lot Residential
West	Large Lot Residential

**APPLICABLE
REGULATIONS:**

The proposal is being reviewed under the Ravalli County Subdivision Regulations (RCSR), as amended August 4, 2005.

INTRODUCTION

The Burr Creek Ranch major subdivision is a 14-lot subdivision proposed on 150.49 acres located south of Victor. In conjunction with the subdivision proposal, the applicant is requesting relief from Section 5-4-4(h), Table B-1 of the RCSR, to allow the internal cul-de-sac road length to exceed 1,400 feet.

RAVALLI COUNTY PLANNING BOARD

SEPTEMBER 5, 2007

BURR CREEK RANCH

14-LOT MAJOR SUBDIVISION AND ONE VARIANCE REQUEST

RECOMMENDED MOTIONS

1. That the variance request from Section 5-4-4, Table B-1 of the Ravalli County Subdivision Regulations to allow for a maximum cul-de-sac length to exceed 1400-feet, be ***approved***, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report.
2. That the Burr Creek Ranch Major Subdivision and Subdivision for Lease or Rent be ***approved***, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL OF THE
SUBDIVISION AND VARIANCE**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Effects on Agriculture*)

Notification of Irrigation Facilities and Easements. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plat shows the irrigation easements on the property. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream

water right holders have the right to use the easements to maintain the ditches.
(*Effects on Agricultural Water User Facilities*)

Notification of Road Maintenance Agreement. Ravalli County, the State of Montana, or any other governmental entity does not maintain Burr Creek Ranch Road or the emergency access through Moose Hollow Road, and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for this road was filed with this subdivision and outlines what parties are responsible for maintenance and under what conditions. If Burr Creek Ranch Road and Moose Hollow Road are not maintained year-round, the Victor Rural Fire Department may not travel on the road in certain conditions. (*Effects on Local Services*)

Notification of Proximity to Fred Burr Creek. Fred Burr Creek Traverses the subdivision. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the creek channel. It is recommended that future lot owners obtain flood insurance. (*Effects on Natural Environment and Public Health and Safety*)

Notification of Severe Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as severe for roads and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils are included as exhibits to this document. (The applicant shall include the exhibits as attachments) (*Effects on Public Health and Safety*)

Limitation of Access Onto County Roads. A non-ingress/egress zone exists along Meridian Road which restricts vehicular access onto this County-maintained road, excepting the approved location for the internal subdivision road. All lots within this subdivision must use the approved access point. This limitation of access may be lifted or amended with approval of the Board of County Commissioners. (*Effects on Local Services and Public Health and Safety*)

2. Protective covenants for the entire One Horse Estates Subdivision shall be submitted with the final plat for the first phase that include the following provisions:

Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, coyote, fox, skunk, and raccoon. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live

with wildlife." Alternatively, see FWP's web site at www.fwp.mt.gov. (*Effects on Agriculture and Wildlife & Wildlife Habitat*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. **Garbage** must be stored in secure bear-resistant containers or indoors to avoid attracting wildlife such as bears and raccoons. If stored indoors, garbage cans may not be set out until the morning of garbage pickup, and must be taken back indoors that day after garbage pickup.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of their owner(s), and not be allowed to roam as they can chase and kill big game and

small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

- g. **Pet food and/or livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets [and/or livestock]** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h. **Barbecue grills** should be stored indoors. Permanent, outdoor barbecues are discouraged in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer and/or elk becoming entangled in the fence or injuring themselves when trying to jump the fence.
- j. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (Board of County Commissioners).

Riparian Covenants. Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. The goal of the no-build/alteration zones along the riparian area associated with Fred Burr Creek traversing the subdivision is to help preserve the water quality and functionality of these drainage areas, protect and enhance potential riparian

areas, and protect property from eroding banks and possible flooding. (*Effects on Natural Environment and Wildlife and Wildlife Habitat*)

The following covenants apply to the no-build/alteration zones along Fred Burr Creek, as shown on the final plat:

- a. No new building or alteration is allowed in the zone.
- b. Only non-motorized access is allowed (except for certain maintenance needs such as weed spraying).
- c. Do not cut or remove live or dead vegetation, particularly shrubs and trees from the no-build/alteration zone. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- d. Do not plant lawns or crops in the buffer zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- e. If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- f. In summary, allow the natural drainage areas to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
- g. These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

No-Build/Alteration Zone. Within this subdivision there is a no-build/alteration zone located along Fred Burr Creek, as shown on the plat, to restrict building in areas with riparian vegetation and potential wetlands. No new structure, with the exception of fences, may be constructed in this area. No new utilities, with the exception of wells, may be constructed in this area. Additionally, there are areas on the property with slopes greater than 25%. These areas are also designated as no-build/alteration zones on the final plat. (*Effects on Natural Environment and Public Health and Safety*)

Temporary No-Build Zone. There is a temporary building restriction zone, as shown on the plat, associated with the Clear Weather Breach Zone of the Fred Burr Dam. This zone may be removed or its extent revised based on new base data collected on the Fred Burr Dam Inundation area or in the event that the status of the dam is increased to "high hazard" as a result of off-site development within the Clear Weather Breach Zone. No permanent dwelling structures shall be allowed in this zone while it is in place. (*Effects on Public Health and Safety*)

Protection of Bobolink Habitat. The Bobolink may utilize this property for nesting and feeding. In order to protect this species of concern, the elimination of sheltering shrubs and general mowing shall be limited to an area of 0.5 acres immediately adjacent to the dwelling unit on Lots 1 through

4. Landowners are encouraged to limit the number of horses on the property, as they might destroy Bobolink habitat. (*Effects on Wildlife & Wildlife Habitat*)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Victor Rural Fire District has adopted the Uniform Fire Code which requires the lot owners to post the County-issued addresses at the intersection of the driveways leading to all residences as soon as construction on the residences begins. (*Effects on Local Services & Effects on Public Health and Safety*)

Primary Heat Source. The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. (*Effects on Natural Environment*)

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (*Effects on Natural Environment and Public Health & Safety*)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. (*Effects on Public Health & Safety*)

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (*Effects on Natural Environment*)

Amendment. The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. (*Effects on all six criteria*)

3. The applicant shall include an RSID/SID waiver in a notarized document filed with the subdivision plat of each phase that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any

successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*

4. Easements for Burr Ranch Road shall be labeled as public road and utility easements on the final plat. *(Effects on Local Services)*
5. A stop sign and road name sign, at the intersection of Burr Ranch Road and Meridian Road, shall be installed and approved by the Ravalli County Road and Bridge Department prior to final plat. *(Effects on Local Services and Public Health and Safety)*
6. A no ingress/egress zone shall be placed along the Meridian Road frontage of the subdivision, excepting the approach as approved by the Ravalli County Road and Bridge Department, on the final plat. *(Effects on Local Services and Public Health and Safety)*
7. The applicant shall submit a letter or receipt from the Victor School District stating that they have received an amount per lot (to be recommended by the Planning Board and approved by the Board of County Commissioners in consultation with the subdivider and the School District) prior to final plat. *(Effects on Local Services)*
8. The subdivider shall submit an (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into account for the Sheriff's Office prior to final plat approval. *(Effects on Local Services)*
9. The applicant shall meet the water supply requirements for the Victor Rural Fire District, which is a 1,000-gallon per minute water supply or a 2,500 gallon per lot water storage for each phase prior to the final plat approval of each phase. Alternatively, the applicants shall contribute \$500 per lot for each phase, as approved by the Fire District, and provide a letter or receipt from the Victor Rural Fire District that the contribution has been made prior to the final plat approval. *(Effects on Local Services and Public Health and Safety)*
10. The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot prior to final plat. *(Effects on Local Services and Public Health and Safety)*
11. The applicants shall provide evidence that plans for a Collection Box Unit (CBU), including location of the box and specifications, have been approved by the local post office prior to final plat approval. *(Effects on Local Services)*
12. The no-build/alteration zones, for slopes greater than 25%, shall be shown on the face of the final plat, as shown on the preliminary plat, and labeled as "no-build/alteration zone due to steep slopes". *(Effects on Public Health and Safety)*

13. The no-build/alteration zone along Fred Burr Creek, as shown on the preliminary plat, shall be shown on the final plat, and labeled as "no-build/alteration zone due to Fred Burr Creek". *(Effects on the Natural Environment and Public Health and Safety)*
14. The Temporary Building Restriction Zone as depicted on the preliminary plat shall be shown on the final plat. In addition to delineating the boundaries of the building restriction zone, the following language shall be included on the face of the final plat: "This is a temporary building restriction zone associated with the Clear Weather Breach Zone of the Fred Burr Dam. This zone may be removed or its extent revised based on new base data collected on the Fred Burr Dam Inundation area or in the event that the status of the dam is increased to "high hazard" as a result of off-site development within the Clear Weather Breach Zone. No permanent dwelling structures shall be allowed in this zone while it is in place." *(Effects on Public Health and Safety)*
15. The Homeowners' Association documents shall include language stating that the association is responsible for the maintenance of the common area and any irrigation facilities held in common. *(Effects on Local Services)*
16. The applicant shall file a master irrigation plan with the final plat that meets the requirements of Section 3-2-15 of the Ravalli County Subdivision Regulations and conforms to the irrigation plan presented in the preliminary plat application. An irrigation delivery system that conforms to the master irrigation plan shall be installed prior to final plat approval. *(Effects on Agricultural Water User Facilities)*
17. All existing and proposed irrigation easements shall be shown on the final plat as they were shown on the preliminary plat. *(Effects on Agricultural Water User Facilities)*
18. The applicant shall construct the roundabouts, as proposed on the preliminary plat, prior to final plat approval. The roundabouts shall be approved by the Ravalli County Road Department as part of the final road review. *(Variance)*
19. The Road Maintenance Agreement shall include a statement that if Burr Creek Ranch Road and Moose Hollow Road are not maintained year-round, the Victor Rural Fire Department may not travel on the road in certain conditions. *(Variance)*
20. The elevation of Burr Creek Ranch Road will be raised by 1.0 to 1.5 feet from Station 3+00 to 11+00 in the area that is within the Clear Weather Breach Zone along Lot 1. The Ravalli County Road and Bridge Department shall approve the final road plans and post construction with this modification. *(Variance)*
21. The emergency access from Burr Creek Ranch Road to Moose Hollow Road shall be improved to have a 20-foot wide gravel travel surface, as approved by the Road and Bridge Department. *(Variance)*
22. The applicant shall remove vegetation along Moose Hollow Road from the subject property to Red Crow Road to provide for 12 feet of vertical clearance prior to final plat approval. *(Variance)*

23. The Burr Creek Ranch Homeowners' Association shall enter into a written agreement with a majority (greater than 50%) of the residents of Moose Hollow Road which shall expressly require the Burr Creek Ranch HOA to remove snow and sand Moose Hollow Road on an "as needed" basis during the winter to ensure that emergency vehicles can access Moose Hollow Road. The Burr Creek Ranch HOA shall, under the provisions of the Road Maintenance Agreement, engage the services of a contractor to plow and sand Burr Creek Ranch Road, the emergency access, and Moose Hollow from the emergency access to the top of the grade, as shown in Exhibit A of the Road Maintenance Agreement. The Burr Creek Ranch HOA shall post a bond that covers the snow plowing and sanding of Moose Hollow Road. If for any reason the Burr Creek Ranch HOA should fail to plow and sand Moose Hollow Road, residents of Moose Hollow Road will have a legally enforceable right to order the plowing and sanding and be reimbursed by the bonding company. (Variance)
24. The applicant shall install a locked breakaway gate that can be knocked down by emergency vehicles or residents of Burr Creek Ranch on the emergency access at the intersection with Moose Hollow Road prior to final plat approval. (Variance)
25. In order to protect bobolink habitat, 0.5-acre building envelopes shall be shown on Lots 1 through 4 on the final plat. The building envelopes shall be located adjacent to the internal subdivision road and along the eastern boundary of each lot. (*Effects on Wildlife and Wildlife Habitat*)

SUBDIVISION REPORT

COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed major subdivision on 150.49 acres will result in 14 lots. The lots range in size from 5.06 to 19.87 acres. The property is located approximately 3 miles south of the community of Victor off Meridian Road.
2. According to the application, portions of the property have been used for agriculture in the past.
3. According to Appendix K of the Ravalli County Subdivision Regulations, there are no Prime Farmland Soils or Farmland of Statewide Importance associated with this property.
4. The property is located in an area where there is a mix of agricultural and residential uses. To mitigate impacts on nearby agricultural practices, a notification of agricultural operations shall be filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)

Conclusions of Law:

1. With the recommended mitigating conditions, impacts of this subdivision on surrounding agricultural practices will be minimized.
2. The creation of these lots will not take Prime Farmland or Farmland of Statewide Importance out of production.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

1. According to the application, the property has water rights. A portion of the water rights will be transferred to the Burr Creek Ranch Homeowners' Association for purposes of irrigating the Common Area. The remaining water rights will be split between Lots 1 through 5.
2. A preliminary Irrigation Agreement and Master Irrigation Plan are included in the application.
To mitigate impacts on agricultural water user facilities, the subdivider shall show all existing and proposed irrigation easements centered on the three irrigation ditches, as shown on the preliminary plat, on the final plat. To further mitigate impacts on agricultural water user facilities, a Master Irrigation Plan meeting the requirements of Section 3-2-15 of the RCSR, which would include a plat-sized plan and irrigation agreement, shall be submitted prior to final plat approval. (Conditions 16 and 17)
3. To notify future property owners and mitigate potential impacts on agricultural water user facilities, a notification of the irrigation ditches and easements shall be filed with the final plat. (Condition 1)

Conclusion of Law:

With the mitigating conditions, there will be no impacts associated with agricultural water user facilities.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

1. Meridian Road and Sheafman Creek Road are County-maintained roads providing access to the subdivision. The applicant is required to pay the pro-rata share of the cost to bring Meridian and Sheafman Creek Roads leading back to U.S. Highway 93 to County standards, per Section 5-4-5(d) of the RCSR.
2. The internal road is proposed to meet County standards. An engineer's certification that the road meets County standards is a requirement of the final plat approval. The Road and Bridge Department has approved the preliminary road plans. (Exhibit A-1)
3. To ensure adequate access to the subdivision, the applicant shall submit an approved approach permit, issued by the Ravalli County Road and Bridge Department, for the Burr Creek Trail access prior to final plat, as required per Section 3-3-4(c) (17) of the RCSR.
4. To mitigate impacts on local services and ensure public access, the easement for the internal road shall be labeled as a public road and utility easement on the final plat. (Condition 4)
5. A Road Maintenance Agreement, in accordance with Section 3-2-18 of the RCSR, for the internal road has been included in the application packet. To mitigate impacts on local services and public health and safety, a notification of the road maintenance agreement shall be included in the Notifications Document filed with the final plat. (Condition 1)

6. Per Sections 3-3-4(c) (14) and (21) of the RCSR, final road plans and grading and drainage plans approved by the Road and Bridge Department, road certifications certified by a professional engineer for the internal road and County-maintained roads leading to the subdivision, and a copy of the General Discharge Permit for Storm water associated with construction activity from MDEQ (if applicable) will be required prior to final plat approval. All infrastructure improvements are required to be completed prior to final plat approval.
7. The applicant is required to submit a road name petition approved by the County GIS department for the internal subdivision road as a requirement of final plat approval. A stop sign and road name sign shall be installed at the intersection of Burr Creek Trail and Meridian Road prior to final plat approval. (Condition 5)
8. To mitigate impacts on local services, the subdivider shall place a "no ingress/egress" restriction along the Meridian Road frontage of the subdivision. The "no ingress/egress" zone shall be labeled on the final plat. A notification of limitation of access onto a state road shall also be included in the Notifications Document. (Conditions 1 and 6)
9. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, an RSID/SID waiver filed with the final plat shall address these services/facilities. (Condition 3)
10. Individual wells and wastewater treatment systems are proposed for lots within this subdivision. (Effects on Natural Environment)
11. Bitterroot Disposal provides service to this site.
12. The Victor School District was notified of the subdivision proposal. To date there has been no correspondence received from the Victor School District. The developer is proposing to make a voluntary contribution to the school district in the amount of \$250 per lot. To mitigate impacts on local services, the developer shall provide evidence that a per lot contribution has been made to the School District prior to the final plat approval. (Condition 7)
13. The subdivision is located within the Victor Rural Fire District. The Fire Department expressed concerns regarding the internal road. These concerns have been addressed by the developer through mitigating measures that have been accepted by the Fire Department. (Variance).
14. To further mitigate any impacts on local services as related to the Victor Rural Fire Department, the applicant shall meet the water supply requirements for the Victor Rural Fire District, which is a 1,000-gallon per minute water supply or a 2,500 gallon per lot water storage for each phase prior to the final plat approval of each phase. Alternatively, the applicants shall contribute \$500 per lot for each phase, as approved by the Fire District, and provide a letter or receipt from the Victor Rural Fire District that the contribution has been made prior to the final plat approval. (Condition 9)
15. To mitigate the impacts of this subdivision on local services and public health and safety, the subdivider shall apply for County-issued addresses for each lot within this subdivision. A provision shall be included in the protective covenants requiring property owners to post County-issued addresses at their driveways to enhance provision of emergency services. (Conditions 2 and 10)
16. The Ravalli County Sheriff's Office provides law enforcement services to this area. No comments have been received by the Sheriff's Office. The current level of service is not

known, but it is generally understood that the Sheriff's Office is operating at an inadequate level of service. The applicant is not proposing any mitigation. (Condition 8) *(Staff Note: Since the current or planned level of service for the Sheriff's Office is unknown and the applicant has not proposed any mitigation, Staff recommends the BCC negotiate an amount per lot with the applicants and include the appropriate finding(s) supporting the amount in their decision.)*

17. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. No comments have been received.
18. The United States Postal Service (USPS) sent a letter to the Planning Department on June 8, 2007 and an email on June 29, 2007 requesting that Collection Box Units (CBUs) be required for all subdivisions with eight or more lots (or if the local post office requests a CBU) and that the locations of the boxes be approved by the USPS (Exhibit A-2). (Condition 11)
19. Homeowners' Association documents are required when common property and facilities are held in common. Proposed Homeowners' Association documents meeting the regulations in Section 3-2-19 of the Ravalli County Subdivision Regulations are included in the application packet and they include several provisions regarding the common area. The Homeowners' Association is required to be formed and the Homeowners' Association documents filed with the final plat. To mitigate impacts on local services, the provisions required to be included in the Homeowners' Association documents shall not be amended without governing body approval and shall include language stating that the association is responsible for the maintenance of the common area and any irrigation facilities held in common. (Condition 15)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be minimized.

CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT

Findings of Fact:

1. Fred Burr Creek traverses the subject property. A notification regarding Fred Burr Creek shall be included in the Notifications Document. (Condition 1)
2. To mitigate impacts on the natural environment and protect riparian areas associated with the Creek, a no-build/alteration zone shall be shown on the final plat, as shown on the preliminary plat. Riparian area covenants recommended by FWP for areas along creeks shall apply to the no-build/alteration zone. (Conditions 2 and 13)
3. The applicants are proposing individual wells and wastewater facilities. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur (Exhibit A-3). Section 3-3-4(13) of the RCSR requires the submittal of the Certificate of Subdivision Plat Approval from the Montana Department of Environmental Quality prior to final plat approval.

4. A noxious weed and vegetation control plan is required to be filed with the final plat of each phase for ground disturbance associated with a subdivision. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district, shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, *such as* road construction, the plan shall be submitted to the weed board for approval from the board. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)
5. To mitigate air pollution resulting from home heating emissions, the protective covenants filed with the final plat shall state that the primary heat source for any newly constructed residences must be at least 75% efficient. (Condition 2)
6. The addition of homes in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)

Conclusion of Law:

With the mitigating conditions and the requirements of final plat approval, impacts from this subdivision on the natural environment will be minimized.

CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

1. The property is not located within the FWP-identified big game winter range.
2. A sensitive species report was submitted with the preliminary plat application and indicates that the subject property may provide suitable habitat for the bobolink and both bull and westslope cutthroat trout. In a letter date June 6, 2007, (Application) Mack Long of Montana Fish, Wildlife and Parks states that the proposed no-build/alteration zone along Fred Burr Creek is adequate to protect against the fish species and recommends that to mitigate against any loss of potential bobolink habitat one of the following mitigating measures should be considered:
 - Eliminating the houses on Lots 1 through 4; or
 - On Lots 1 through 4, cluster the homes along the eastern boundaries of the lots and close to the road in conjunction with limiting the amount of the developable area of each lot to just adjacent to the home (no specific amount was recommended). (Condition 24)
3. In a letter dated June 8, 2007 (Application), PCI has offered alternative mitigation to protect the bobolink habitat:
 - Limit lawns on Lots 1 through 5 to 0.5 acres immediately adjacent to the dwelling. The balance of the site would be maintained in its natural state with the natural vegetation remaining.
 - Limit burning or any disturbance to the natural vegetation on the lots and the Common Area from May 1 to July 15 of each year (during the mating season of the bobolink).

4. To protect potential bobolink habitat, 0.5-acre building envelopes shall be shown on Lots 1 through 4 on the final plat. The building envelopes shall be located adjacent to the internal subdivision road and along the eastern boundary of each lot. Furthermore, staff has included a provision regarding bobolink habitat within the covenants. (Conditions 2 and 25)
5. To mitigate impacts on wildlife, living with wildlife provisions and restrictions on developing in riparian areas shall be included in the covenants. (Condition 2)

Conclusion of Law:

With the conditions of approval, impacts of the proposed subdivision on wildlife will be mitigated.

CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

1. The conditions that address the Fire District's recommendations will mitigate impacts on local services and public health and safety. (Conditions 2, 9, and 10)
2. A Floodplain Analysis was conducted on Fred Burr Creek and the analysis was approved by the Ravalli County Floodplain Administrator on February 6, 2007 (Application) with the following recommended mitigating conditions to limit the effects of the proposal on the natural environment and public health and safety:
 - A no-build/alteration zone extending horizontally from both sides of the modeled 100-year floodplain to the Clear Weather (CW) Breach inundation area as depicted on the DNRC's maps. The no-build/alteration zone should also be inclusive of the modeled floodplain. (Conditions 13 and 14)
 - The proposed subdivision is located within a FEMA mapped floodplain, and it is strongly recommended that property owners obtain flood insurance. (Condition 1)
 - Based on comments received from the DNRC, it is recommended that all residential structures within the proposed subdivision be elevated so that the lowest floor is located at least two (2) feet above the 100-year base flood elevation
3. In addition to the above recommended mitigating conditions, the Floodplain Administrator expressed concern with the potential future erosion of Fred Burr Creek which may result in the need for bank stabilization.
4. The preliminary plat shows that Lots 6, 7, 10, 11, and 12 have steep slopes (greater than 25%), which are required to be identified as no build/alteration zones on the final plat. In order to mitigate impacts on the natural environment and public health & safety, notification of the no-build/alteration zones shall be included in the notifications document and the no-build/alteration zones shown on the final plat. (Conditions 1 and 12)
5. To mitigate impacts on public health and safety, the applicant shall install a road name and stop sign at the intersections of the internal road and Meridian Road. (Condition 5)

6. The subdivider shall place a "no ingress/egress" restriction along the Meridian Road frontage of the subdivision. The "no ingress/egress" zone shall be labeled on the final plat. A notification of limitation of access onto a County road shall be included in the Notifications Document. (Conditions 1 and 6)
7. The preliminary plat and soils map indicate that portions of this subdivision may have soils rated as severe for building and road construction. To educate property owners and to mitigate potential impacts of this subdivision on public health and safety, a notification of the potential for severe soils shall be included in the Notifications Document filed with the final plat of the first phase. (Condition 1)
8. Lots will be served by individual wells and wastewater treatment systems. (Natural Environment)
9. To mitigate the general impacts of this subdivision on public health and safety, the subdivider shall apply for County-issued addresses for each lot within this subdivision. A provision shall be included in the protective covenants requiring property owners to post County-issued addresses at their driveways to enhance provision of emergency services. (Conditions 2 and 10)
10. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. (Condition 2)
11. There is a prevalence of radon in the County and to mitigate impacts on public health and safety, the covenants for this property shall include a statement regarding radon exposure. (Condition 2)

Conclusion of Law:

The mitigating conditions and requirements of final plat approval address potential impacts of this subdivision on public health and safety.

COMPLIANCE WITH:

1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements, or conditions have been required to bring the proposal into compliance.

2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

CONSISTENCY WITH EXISTING ZONING AND COVENANTS

Findings of Fact:

1. The application states the property is not located within a voluntary zoning district.
2. The minimum lot size within this 14-lot subdivision is 5.06 acres. The proposal is not effected by interim zoning.
3. There are existing covenants on the property (Application). The existing covenants limit the future subdivision of the subject property to a total of 14 lots.

Conclusion of Law:

Zoning does not apply to this property and the proposal is in conformance with existing covenants.

PROVISION OF EASEMENTS FOR UTILITIES

Findings of Fact:

1. The plat indicates utility easements are located along and within the easement/right-of-way of Meridian Road. Utility easements are proposed to be extended along the internal subdivision road.
2. According to the application, the proposed subdivision will be served by Northwestern Energy, Ravalli Electric Co-op and Qwest Telephone.
3. Utility easements are required to be shown on the final plat.

Conclusion of Law:

Utility services are available to the subdivision.

PROVISION OF LEGAL AND PHYSICAL ACCESS

Finding of Fact:

Physical and legal access for this subdivision is proposed via Meridian Road (County-maintained). The lots will access off an internal road. (Local Services)

Conclusion of Law:

With the conditions of approval and requirements of final plat approval, the proposal meets physical and legal access requirements.

VARIANCE REPORT

VARIANCE REQUEST #1

The applicant has requested a variance from Section 5-4-4(h), Table B-1 of the RCSR to allow the internal cul-de-sac road to exceed the maximum length of 1,400 feet. Chapter 2 of the RCSR defines cul-de-sac road as "a street having only one outlet for vehicular traffic and terminating in a vehicle turn-around area. The proposed internal cul-de-sac road (Burr Creek Ranch Road) is approximately 5,350 feet or over one mile in length.

Compliance with Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

Cul-de-sac Road Length

1. Primary access to all the lots is proposed via Sheafman Creek Road, Meridian Road, and the internal cul-de-sac road, Burr Creek Ranch Road, which is proposed to meet County standards except for the maximum allowed cul-de-sac length. The road exceeds a mile in length.

Emergency Access – Moose Hollow Road

2. The applicant is proposing an emergency access near the end of Burr Creek Ranch Road to connect to Moose Hollow Road. The proposed emergency access will have a 20-foot wide gravel all-weather travel surface and a locked breakaway gate. Moose Hollow Road is a privately-maintained, gravel road within a public easement. Portions of the road are steep (approximately 13% according to the variance application), narrow, and do not provide sufficient vertical clearance for fire trucks due to vegetation.
3. At the public hearing before the Planning Board on July 18, 2007, Jan Varner, a resident of Moose Hollow Road, stated that Moose Hollow Road is in poor condition because of a steep hill and sharp turn, which make it inaccessible at certain times during the winter (Exhibit C: Minutes from July 18, 2007 Planning Board Meeting).

Fred Burr Creek Dam Inundation Zone

4. The subject property is located within the Fred Burr Creek Dam Inundation Zone. Approximately half of the proposed cul-de-sac road is located within the Clear Weather (CW) Breach inundation zone. In a letter dated December 22, 2006 (Application), Larry Schock of the DNRC states that "the CW breach [inundation zone] represents a sudden failure of the dam when the reservoir level is at the spillway crest." The letter continues to state that the data used to identify the inundation zones "are only a visual approximation of the breach analysis and the actual inundation areas are identified by where the breach analysis elevations intersect the natural ground."

Public Health and Safety Concerns

5. The combination of a cul-de-sac road exceeding one mile, the poor condition of Moose Hollow Road, and the location of the Fred Burr Creek/dam inundation zone has the potential to make it difficult for future lot owners and emergency services to exit or access the property in emergency situations. Planning staff met with the developer, the developer's representatives (PCI and Bill Van Canagan), the Victor Rural Fire Department, and the Ravalli County Floodplain Administrator to discuss these major issues. Correspondence and meetings are outlined below.

Outline of Meetings and Correspondence

6. In a letter dated October, 17, 2006 (Application), Tommy Dobberstein, Chief of the Victor Volunteer Rural Fire Department (VVRFD) stated the following concerns regarding the cul-de-sac road design and water supply:
 - The proposed road (Burr Creek Ranch Road) does not meet the Fire Districts restrictions on percentage of slope allowed on an access road, the portion of the proposed roadway that exceeds our 6% standard cannot be accepted because of roadway design in this area.
 - We will not accept any deviation from a through road as outlined in county subdivision standards.
 - Due to the distance of the development from our established water fill sites the developer will need to provide ample water supply as established by NFPA 1142. If the proposed houses exceed 3600 square feet then additional supplies of water will need to be provided. Initial proposals for this subdivision had included a high flow well located in the initial common area close to Meridian Road. The Board of Directors determined that a well that produced a flow of at least 400 gallons per minute would be adequate to supply the subdivision.

7. In response to the above letter, Professional Consultants, Inc. (PCI) met with Chief Dobberstein to discuss the Fire Department's concerns on March 16, 2007. In a letter dated April 10, 2007 (Application), PCI outlined the following mitigation measures that were discussed at the March 16th meeting:
 - The road proposed for use in this development has been constructed as an access driveway to the new home recently built by the owner on the property. The road, as constructed, meets County standards for grade and alignment, and will be further improved to a paved County standard roadway if the project receives preliminary plat approval. To mitigate your concerns with grades over 6%, we propose to construct driveways into the uphill Lots 13 & 14 as shown on the attached sketch as part of the required road improvements. The driveways could be used as emergency run-outs should road and truck conditions require.
 - We are not requesting any deviation from County subdivision regulations for a through road. We have connected to the privately maintained Moose Hollow [Road] with an emergency access only connector. This access [will be] gated and will be constructed as an all-weather road and may be used by emergency vehicles or by local traffic in any emergency situation.
 - We understand that the WRFD has acquired, or will be acquiring, additional water supply points near this project and that the immediate need for additional supplies has lessened. The initial discussion with prior developers on this project were unknown to us. The current developer proposes to provide \$500 per lot contribution to the WRFD capital improvements fund at the time of filing the final plat for this Project.
8. The VVRFD submitted a letter on July 18, 2007 stating that the mitigating measures proposed by PCI were acceptable. (Exhibit A-4)
9. The combination of a cul-de-sac road exceeding one mile, the poor condition of Moose Hollow Road, and the location of the Fred Burr Creek/dam inundation zone continued to give planning staff concerns about the public health and safety implications of this variance request. These concerns were discussed with PCI in an email dated July 24, 2007 (Exhibit A-5).
10. During an on-site meeting between PCI (Tom Hanson and Bill Burnett), the developer (Paul Shirley), Planning Staff (Renee Van Hoven and Tristan Riddell), and Earl Gray of the VVRFD on July 25, 2007, Earl Gray stated that the VVRFD would potentially not respond to emergency calls for lots located at the end of Burr Creek Ranch Road during winter due to the road grade exceeding 6% and the potential for dangerous, icy conditions. He was concerned that future owners of the Lots 13 and 14 would park RVs or other obstructions in the run-out driveways the applicant is proposing for fire trucks. He said the VVRFD would not compromise the safety of fire fighters if Burr Creek Ranch Road was icy. Earl Gray stated that currently the VVRFD has informed residents located off Moose Hollow Road that during winter there is no guarantee that the VVRFD can or will provide emergency services. This is because portions of Moose Hollow Road are narrow, have grades over 6%, and do not provide 12-foot vertical clearance. There is also a sharp curve below a grade of approximately 13% that could be dangerous in certain conditions.
11. Subsequent to the above discussions, Planning Staff met with PCI on August 24, 2007 to discuss the developer's proposal for additional mitigating measures in regards to public health and safety concerns. PCI and the developer have proposed the following mitigating measures (Variance Application – Revised August 29, 2007):
 - Roundabouts on Burr Creek Ranch Road

- Secondary access through Moose Hollow Road
 - Winter maintenance on Moose Hollow Road
 - Improvements of Moose Hollow Road for emergency vehicles
 - Improvements to Burr Creek Ranch Road and reconfiguration of lot boundaries for Lots 2 and 3 to mitigate safety concerns relative to the Clear Weather Breach Zone of Fred Burr Dam.
 - The Burr Creek Ranch Homeowners' Association will enter into a written agreement with Moose Hollow property owners that will require the Burr Creek Ranch HOA to engage the services of a contractor to plow the emergency access as well as the portion of Moose Hollow Road as depicted in Exhibit A of the proposed road maintenance agreement (Updated Application). Additionally the Burr Creek Ranch HOA will post a bond that covers the costs associated with snow plowing and sanding of Moose Hollow Road. (Condition 23)
 - To further improve conditions along Moose Hollow Road for secondary access by emergency vehicles, the Burr Creek Ranch developer will contract for the removal of overhanging branches on trees that line Moose Hollow Road. Trees will be trimmed to a height of 12 feet in order to meet the request of the Victor Volunteer Fire Department. (Condition 22)
12. The developer submitted an updated preliminary plat showing the reconfiguration of Lots 3 and 4 to provide all lots within the subdivision with access outside of the CW breach inundation zone and an updated variance application outlining additional mitigation on August 29, 2007.
13. To mitigate impacts on public health and safety, the following conditions shall be met:
- The applicant shall construct the roundabouts, as proposed on the preliminary plat, prior to final plat approval. The roundabouts shall be approved by the Ravalli County Road Department as part of the final road review. (Condition 18)
 - The Road Maintenance Agreement and the Notifications Document shall include a statement that if Burr Creek Ranch Road and Moose Hollow Road are not maintained year-round, in certain conditions, the Victor Rural Fire Department may not travel on the road. (Conditions 1 and 19)
 - The elevation of Burr Creek Ranch Road will be raised by 1.0 to 1.5 feet from Station 3+00 to 11+00 in the area that is within the Clear Weather Breach Zone along Lot 1. The Ravalli County Road and Bridge Department shall approve the final road plans and post construction with this modification. (Condition 20) *(Staff Note: David Ohnstad stated that this minor modification can be addressed in the review of the final road plans.)*
 - The emergency access from Burr Creek Ranch Road to Moose Hollow Road shall be improved to have a 20-foot wide gravel travel surface, as approved by the Road and Bridge Department. (Condition 21)
 - The applicant shall remove vegetation along Moose Hollow Road from the subject property to Red Crow Road to provide for 12 feet of vertical clearance prior to final plat approval. (Condition 22)
 - The Burr Creek Ranch Homeowners' Association shall enter into a written agreement with a majority (greater than 50%) of the residents of Moose Hollow Road which shall expressly require the Burr Creek Ranch HOA to remove snow and sand Moose Hollow Road on an "as needed" basis during the winter to ensure that emergency vehicles can access Moose Hollow Road. The Burr

Creek Ranch HOA shall, under the provisions of the Road Maintenance Agreement, engage the services of a contractor to plow and sand Burr Creek Ranch Road, the emergency access, and Moose Hollow from the emergency access to the top of the grade, as shown in Exhibit A of the Road Maintenance Agreement. The Burr Creek Ranch HOA shall post a bond that covers the snow plowing and sanding of Moose Hollow Road. If for any reason the Burr Creek Ranch HOA should fail to plow and sand Moose Hollow Road, residents of Moose Hollow Road will have a legally enforceable right to order the plowing and sanding and be reimbursed by the bonding company. (Condition 23)

14. To mitigate impacts on adjoining landowners, the applicant shall install a locked breakaway gate that can be knocked down by emergency vehicles or residents of Burr Creek Ranch on the emergency access at the intersection with Moose Hollow Road. (Condition 24)

Conclusion of Law:

The mitigating conditions will ensure that the granting of the variance will not be substantially detrimental to public health and safety or injurious to adjoining landowners.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The application states that due to the configuration and geography of the property the long cul-de-sac is the most appropriate form of access for the property.
2. There are many other properties in Ravalli County that are long and linear without multiple access routes that are readily available.
3. The application states that the other alternatives, a loop road providing for two accesses off Meridian Road or a through-road connecting to Moose Hollow, would have negative impacts to the environment and surrounding neighbors. The application states that the long cul-de-sac road is the most effective, environmentally sound and socially acceptable solution.
4. While the alternatives listed in the application do not appear to be good solutions based on the potential for negative impacts, they are not the only alternatives. There are no unique conditions preventing the applicant from building a road that is 1,400 feet or less in length.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the property.

C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The application states that lot configuration and geography prevents the applicant from meeting the RCSR.

2. In order to keep the current lot configuration, the topography of the parcel makes it challenging to design a County standard internal road to access the western lots. There are no physical conditions that require the current lot configuration and road design.

Conclusion of Law:

Physical conditions, such as topography or parcel shape, do not prevent the applicant from meeting the strict letter of the regulations.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The application complies with Resolution 2038. The zoning regulations are not relevant to the variance request.
2. The provisions in the Growth Policy do not address public health and safety issues.

Conclusions of Law:

1. The subdivision proposal complies with applicable zoning regulations, but these regulations are not relevant to the variance request.
2. There are no provisions in the Growth Policy that are related to this variance request.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. The application states that Burr Creek Ranch Road will be privately-maintained and will not create an increase in public costs.
2. Public costs could be affected if emergency services have difficulty accessing the subdivision. With the improvements and continued maintenance of Burr Creek Ranch Road and Moose Hollow Road, emergency services will have access to the subdivision.

Conclusion of Law:

With the mitigating conditions, granting the variance does not appear to have the potential to substantially increase public costs.

Public comment was then called for.

Donna McCremman lives on Moose Hollow Road. She stated she feels good about this subdivision, but she does not understand why she needs to sign any papers as Moose Hollow is a county road.

Larry Draper, President of Fred Burr Water Users Association, stated his main concern is the clear water breach and dam area that has been marked by the DNRC. If the hazardous rating of the dam is changed, due to the categories established by the Forest

Service, the cost to retro-fit the dam will be major. Spillways and dam reconstruction will be required. They want to follow the low hazard rating, which they have now, and have a no-build area in the clear water breach.

Bill Burnett of PCI stated Engineer Gill Larson and Steve Cunningham are present for any questions the Board may have. Steve has fire and public safety experience which could be beneficial to the issues of the development. Bill asked how the Board wanted to handle the presentation as they do have information on the variance request they would like to present first.

Commissioner Grandstaff agreed they should handle the variance first, unless they wanted to do a project overview. Commissioner Thompson and Commissioner Driscoll both stated if the variance is not approved, the subdivision can not be approved, but a quick project overview would be acceptable.

Bill gave a project overview, which included the number of lots, location of proposal and the conformance to the proposed subdivision regulations. Bill addressed the density, common area, pro rata shares for Meridian and Sheafman Creek Roads, and the Planning Board's unanimous approval of the proposal.

Bill addressed the variance request and the mitigating factors. Burr Creek Road is a private road with no through traffic. There are two roundabouts that allow easy travel for public safety vehicles. This roundabout shortens the effects of the cul-de-sac. The provision of a secondary exit road to Moose Hollow Road also minimizes the length of Burr Creek Road. The homeowners will have a snow removal policy in place. The developer will pay for trimming the trees on the road which gives additional access from Moose Hollow Road to Burr Creek Road. There are two run outs at the upper end of the cul-de-sac by way of driveways in case the road is ever icy. The lot lines for 3 & 4 are outside of the clear zone of the dam breach zone. The road surface will be raised so there will be no negative effect in case of a dam breach. The variance request is based on the physical conditions (these are found in the Planning Board's conditions), i.e., this is a long narrow piece of land which is not applicable for a loop road. A loop road would also disturb riparian areas. Thus, they would like to have the cul-de-sac. The turn around and secondary accesses are provided along with the snow plowing and sanding allowing for all season access. The hardship is geographical which can not be mitigated by a loop road, thus the cul-de-sac is logical and practical. The Planning Board agreed with this variance request.

Steve Cunningham spoke about the safety issues relative to the variance. His previous experience is being a Fire Chief of Lewistown for the past 6 years and building official. He was also chairman of local emergency planning committee and they addressed the needs of emergency response for the county. He stated he has been active with Rural Fire Districts in Montana. Thus, he has a good understanding of what the Commissioners are up against in these types of proposals. In regard to this road, there will be a 22' wide driving service. The turn around is a nice addition which allows the fire trucks to turn around and have staging areas. This single road with the outlets will reduce the amount

of traffic and congestion and allow better control of the emergency vehicles. The shape of the property does not work well for a loop road because of the steep terrain. Steve felt this was good for the existing Moose Hollow Residents as it gives them emergency exits and plows the road in inclement weather.

Bill addressed the mitigation associated with the project.

Effects on Agriculture: This development will not take any farm land out of production and there has been no history of meaningful agricultural production. A notice will be placed within the covenants showing they may be surrounded by agricultural activities.

Effects on Agricultural Water: There will be no downstream effects on water users. The laterals will be replaced with pipelines and a pump system. The mitigation proposes an irrigation master plan which provides for spray irrigation on lots 1-5 and the common area. The flood irrigation will be removed, and will enhance the habitat for the bobolink.

Effects on Local Services: Will be mitigated as stated above. They propose a voluntary contribution of \$500 per lot to the Fire District and Sheriff; \$250.00 to the Victor School District. Bill stated most of the residents will be 'empty nesters' thus not as many children will live in the subdivision.

Effects on Natural Environment: Fred Burr Creek runs through the property in lots 6 and 7. In regard to mitigation of the dam, a permanent no build alteration zone has been created in Zone A and will preclude any disturbance off slopes exceeding 25%. It will also protect Fred Burr Creek. Zone B has been created to preclude any habituated structures of the dam zone. This is a low hazard dam and no additional structures will be located within the dam area, so the dam will not be elevated to another status (high hazard). This zone could be revised in the event the dam is ever raised to a high hazard status which would be caused by actions outside of this proposed subdivision.

Effects on Wildlife and Wildlife Habitat: This has been mitigated by the protective covenants and the inclusion of building envelopes on Lots 1 through 4, in accordance with Montana Fish Wildlife and Parks recommendation.

Effects on Public Health and Safety: Fire protection and emergency concerns, as well as flooding have been addressed by the creation of Zone A. Dam inundation has been addressed by Zone B, and Lots 2 & 3 is outside of the inundation area. Also, by raising Burr Ranch Road they will remove any potential flooding.

Bill stated in summary the Developer and Consultants have worked closely with Planning, Fish, Wildlife and Parks, the existing residents, and the Fire District to address the needed mitigation. They received a unanimous approval (from the Planning Board) and strong findings of facts to support that approval. This is a carefully planned subdivision and they seek approval by the Commissioners.

Attorney Jennifer Lint stated she represents the Schram Family Estate. This Family Estate owned 260 acres below this proposed subdivision. Mr. and Mrs. Schram died and

the land has now been split between the family members. Some of the acreage was sold leaving 95 acres. Jennifer stated the Schram family supports this proposed subdivision. The Schram acreage was ranched for a number of years but was subsistence farming as they made no financial gains from those activities. The Schram family also looked at the most responsible management of the land which is also utilizing it as a residential subdivision. Currently they are leasing the balance of the property for grazing. This land not been used since 2000. Mary Beth Schram is now disabled and Jennifer is her guardian. The Schram family plans to go forward with a well planned development like this proposal today. She stated there will be no loss of agriculture and she asked the Commissioners to take that into consideration as the review this proposal today.

Hoot Gibson lives on Moose Hollow and asked about the run outs. Bill explained by viewing a map where the run outs will be located within the subdivision. Hoot asked about sanding the road. Bill stated their plan is to plow Moose Hollow Road during snow fall and sand during icy conditions. This will only be the segment to the mail boxes.

Gilbert Larson, engineer of PCI stated he was here today on behalf of Engineer Tom Hanson. He stated the presentation is clear and he is available to answer any questions.

Attorney Bill Van Canagan stated he represents the applicant. He stated the variance application is unique but it is within the spirit of the variance request. He previously addressed this with Alex and some of the residents. This is unique for the Fred Burr and Moose Hollow Residents. They need emergency access and this project addresses the emergency response and safety issues. Bill also stated they are not asking any Moose Hollow Residents to sign any documents. At the beginning of the proposal they had concerns over the legal liability and safety of the road during the winter months, but the Developer has addressed this mitigation on his own. The Developer, as a condition of final plat, will have a written contract with a third party provider to sand and plow the road on an as needed basis. The Burr Creek Homeowners Association will be responsible to make that needed contact for services. The mechanism to handle the problem will be the contract the Developer has with the contractor.

Larry Draper asked if the subdivision is adopted, what guarantees does the Fred Burr Water Users Association have that there will be no building at a later time which would raise the status of the dam to high hazard. He also stated that the bridge was 2' lower than it should be. He asked if that had been corrected. He also addressed some flood damage last year and does not want this subdivision to have a negative impact on the dam.

Commissioner Rokosch stated it was his understanding the septic permits will be noted on the plat and this area is within a flood plain. Therefore a permit will be needed in terms of structures. He stated that will be noted on the final plat.

Renee Lemon stated the Flood Plain notation is required on the main stem of the Bitterroot River. These provisions will be in the covenants and filed with final plat; but she is unsure of enforcement.

Tristan stated normally the Planning Department is advised of any building violations by adjacent homeowners. Discussion then took place in regard to the covenants being enforced by the county since they are normally enforced by the Home Owners. Renee then checked with Alex and was advised the county or home owners will be responsible for this issue of enforcement.

Gilbert Larson stated the final plat will show this dedication for restriction. This is more binding and puts the county in an enforcement position.

Commissioner Rokosch stated there are some limitations as the Planning Department will not go out and make site visits. However they will react to any complaints they receive.

Bill Van Canagan stated the county has the statutory requirement to enforce and can invoke penalties as defined by statute.

Donna asked again if any signatures are needed. Bill stated no signatures are needed and they understand her concerns of liability.

Tristan indicated the county owns the easement where the road is platted, but they do not maintain it.

Bob Hayfork is a neighbor to this development. He stated his property line does not go to the middle of the road. The county received the road back through a tax deed.

Public Comment was now closed.

Commissioner Rokosch asked planning staff to address the Planning Board recommendations. Tristan stated they found negative findings on B and C, but staff still recommends approval on the variance. Staff could find no reasons to conclude the variance was unique to the property and could not make findings to support that.

Renee stated this subdivision was reviewed under the old regulations. The manner in which they reviewed the variances was different than the way it is done now. Under the new format, they would look at undue hardship and public policy. Commissioner Rokosch stated in regard to the variance request, they could adopt staff's report or adopt the Planning Board's recommendation.

The Board agreed to move to Board deliberation of the variance request.

Commissioner Grandstaff asked Bill if the road with the turnarounds conforms to the map presented. Bill stated the turnarounds are not built yet. Commissioner Grandstaff stated Moose Hollow Road looks substandard and if a pro rata share is accepted, she would have work done on that road first. Tristan stated if they were proposing a through road, Moose Hollow would be required to be brought up to county standards. Since it is being proposed as an emergency access, improvements are not required.

Commissioner Rokosch asked about the improvements on Moose Hollow Road for fire response. Bill stated the trees hang over the road, so they would cut the tree limbs to 12'. They will maintain the 12' vertical clearance and the Home Owners Association will have a contract in order to continue this tree trimming.

Commissioner Rokosch asked about the fire district asking for additional water supply points. Bill stated that discussion was early in the process. Another resident in the area, Tommy Dobberstein had a borrow pit and he offered it as a water supply. Therefore they no longer need another water supply source.

Commissioner Thompson addressed plowing and sanding and the emergency access provision. Bill stated the emergency access and run outs are within the provision. They will also make sure recreational vehicles do not park there.

Commissioner Driscoll asked Bill about the road being raised. By map, Bill explained where the road will be raised for reasons of a possible flood event.

Commissioner Grandstaff asked about the road maintenance agreement. She noted if the maintenance is not done, then Victor Fire Department does not have to travel on the road. Renee stated in certain weather conditions the Victor Fire Department will not go down the road if it not sanded and plowed. Bill stated the contract for services will be in place. He also noted with plowing, sanding and tree trimming, Moose Hollow will be a good road for emergency exit.

Hoot stated there is another mile of road after the mailboxes, and they (the residents) maintain that section or they do not get their mail.

Commissioner Grandstaff also asked about the break away gate. Bill explained the gate will preclude casual traffic. In case of an emergency, the gate knocks down with a simple push of a bumper. Commissioner Thompson stated there as several of those types of gates in the county at certain subdivisions.

Commissioner Driscoll asked about the 1,400' of the cul-de-sac. Renee stated in general, long cul-de-sacs are not good for emergency access. Commissioner Chilcott stated it is always good to have two emergency accesses and exits.

Commissioner Driscoll asked how far the no-build zones are from the creek. Bill stated it depends upon where you are from the road area, but it is approximately 400' from the center of the road.

Commissioner Rokosch made a motion that the variance request from Section 5-4-4 Table B-1 of the Ravalli County Subdivision Regulations to allow for a maximum cul-de-sac length to exceed 1400 feet be approved based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report. Commissioner Driscoll seconded the motion.

Discussion: Tristan asked for amendment on condition 22. Commissioner Rokosch stated to replace the word 'remove' with 'maintain' under condition #22 and add that the vertical clearance on Moose Hollow be maintained in perpetuity by the Home Owners Association. Tristan stated it would be cleaner to remove condition #22 and add its' language to condition #23 with the addition of the 12' vertical clearance language, and also to strike the requirement to obtain signatures of 50% of the residents of the effected portion of Moose Hollow Road, and that the Burr Creek Ranch HOA enter into a written agreement with service providers for sanding, plowing and tree maintenance.

Commissioner Rokosch amended his motion to incorporate condition #22 into condition #23 and strike the language regarding the need to obtain 50% of the affected homeowners along Moose Hollow Road. Commissioner Driscoll seconded the amended motion. All voted "aye".

The Board then addressed the request for subdivision.

Minutes: Beth Perkins

Commissioner Grandstaff noted the Planning Board voted unanimously to approve the subdivision. She requested moving on to the six criteria.

Commissioner Rokosch questioned a letter received from Fish, Wildlife and Parks regarding the common area. Bill replied they are planning to irrigate the common area. He stated they are in compliance with Fish, Wildlife and Park's suggestions. Commissioner Grandstaff asked about noxious weeds. Tristan replied the homeowners' association will be irrigating the common area.

Criterion 1 Effects on Agriculture: The Commissioners voted unanimously that criterion number one has been sufficiently mitigated.

Criterion 2 Effects on Agricultural Water User Facilities: Commissioner Rokosch stated there is a paragraph that addresses "to these easements to retain irrigation ditches". He would like to see the maintenance of the ditches language to include 'use of motorized construction equipment, use of fire, and applications of herbicides' spelling it out for future homeowners. Tristan agreed he will make the amendments if that was the Boards wish. **The Commissioners voted unanimously that criterion number two has been sufficiently mitigated.**

Criterion 3 Effects on Local Services: Commissioner Grandstaff stated there is an offer of \$500 per lot for the Victor Fire District upon final plat approval, \$500 per lot to the Sheriff's Office, and \$250 per lot for the Victor School district. Commissioner Rokosch discussed the school district contribution. He stated he does not believe \$250 per lot effectively mitigates the impact. Bill stated he hopes the Commissioners will implement the impact fees to address the impacts on the school districts, and as developers they have

to 'guess' what the voluntary contributions should be. Commissioner Driscoll stated the larger homes may turn into family homes. Commissioner Rokosch stated the numbers given adequately addresses the impacts. Bill stated after consulting with the developer, his interest is in education therefore he would like to increase the offer to \$500 per lot, payable upon final plat approval. **The Commissioners voted unanimously that criterion number three has been sufficiently mitigated.**

Criterion 4 Effects on the Natural Environment: Commissioner Grandstaff read the findings of fact. Commissioner Rokosch asked if the wood burning stoves have been addressed. Bill asked if it could be made as a condition. Commissioner Grandstaff stated her preference would be no woodstoves. Commissioner Rokosch stated if wood stoves are allowed they should meet a high level of efficiency. The developer stated he would prefer to allow wood stoves and the high efficiency rating would be a requirement. Renee replied the Planning Staff is recommending using EPA certified wood stoves. Commissioner Chilcott discussed the standards of wood stoves. Commissioner Grandstaff disagrees with Commissioner Chilcott. Commissioner Rokosch stated pellet stoves which produce a lower rate of emissions could be allowed. Bill stated Missoula County has an air quality district. Because of the air quality within that zone, no wood stoves are allowed. Commissioner Grandstaff asked the developer, Paul Shirley, if he would consider the use of pellet stoves and not wood burning stoves. Commissioner Driscoll stated DEQ looked into the particles in the air and the County is beginning to mitigate the use of these stoves. Commissioner Grandstaff stated in the past, the Board has asked developers to put into a covenant forbidding the use of wood stoves. Commissioner Thompson stated there have been strides and improvements with wood stoves. There are businesses that both sell and install wood stoves. People cut and use their own wood. The technology has changed quite a bit. He is not in favor of anyone installing an old wood stove that consumes a huge amount and outputting harmful particles. Alex replied the building code question is a real concern. There is some guidance from a court case in Helena. This discussion is in regard to fire restriction and building codes, which the county does not have the authority to do.

Commissioner Grandstaff asked Alex if they can request the developer list that requirement in the covenants and be done on a voluntary basis. Alex stated yes the EPA approved stoves could be listed on the covenants. He also recommended being vague about the stoves because the county can not mandate without a regulation. Paul stated he does not see stoves as a heat source, rather the owners and builders will be looking at forced hot water/air furnaces. He does see fireplaces being used for wood burning. He would be willing to limit one wood burning fireplace per house for decorative purposes only. Commissioner Chilcott stated he is reluctant to take away that option to homeowners. Bill requested a five minute recess to discuss the mitigation options with Paul.

The recess was now completed.

Bill stated they would include in the covenants that solid fuel burning devices shall not be the primary heat source. It would also include the goals for residents to obtain 75%

efficiency for secondary fuel systems. **The Commissioners voted unanimously that criterion number four has been sufficiently mitigated.**

Criterion 5 Effects on Wildlife and Wildlife Habitat: The Commissioners voted unanimously that criterion number five has been sufficiently mitigated.

Criterion 6 Effects on Public Health and Safety: Commissioner Grandstaff read the findings of fact from the Planning Staff Report. Commissioner Grandstaff questioned the ground water. She stated Roger DeHaan submitted a letter to the Commissioners. Bill replied on this piece of property there was flood irrigation and was mainly to provide hay production for horses kept on the property. Typical with flood irrigation, it stays on the surface and runs onto other people's property. It has been 7 years since the flood practice has been used. They do not have an elevated water system. The source is the creek only. Commissioner Chilcott stated their proposed irrigation method is within the standards. Commissioner Driscoll asked about the sensitivity of the water to the lots. **The Commissioners voted unanimously that criterion number six has been sufficiently mitigated.**

Commissioner Grandstaff requested a motion.

Commissioner Chilcott made a motion that the Burr Creek Ranch Major Subdivision be approved based on the findings of fact and conclusions of law in the Planning Staff Report amending Condition One to include language regarding potential maintenance methods for irrigation facilities, amending the Primary Heat Source covenant in Condition Two to state that solid fuel burning devices shall take advantage of the best available technology to help minimize air pollution. A goal shall be to obtain 75% efficiency, and amending Conditions Seven and Eight to state that a \$500 per-lot contribution be made prior to final plat to the School District and Sheriff's Department. Commissioner Driscoll seconded the motion, all voted 'aye'.

In other business, the Board met to interview Joseph Constantino for the Salary Compensation Board.

The Board met to interview Kathy Good for the Animal Protection & Control Board.